

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

JACQUE ARMSTRONG,)	Case No. _____
)	
Plaintiff,)	NOTICE OF REMOVAL
)	WITH
vs.)	JURY TRIAL REQUESTED IN
)	LINCOLN, NEBRASKA
)	
HY-VEE, INC. and HY-VEE FOOD)	
STORES, INC.)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA:

Defendant Hy-Vee, Inc. ("Defendant"), pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, hereby gives notice of removal of this action to the United States District Court for District of Nebraska. As grounds for this removal, Hy-Vee, Inc. states as follows:

FACTUAL BACKGROUND

1. On or about June 29, 2015, Plaintiff filed this action against Defendant in the District Court of Lancaster County, Nebraska. A Civil Summons issued by the District Court of Lancaster County was served on Defendant on July 6, 2015. As required by 28 U.S.C. § 1446(a), attached hereto collectively as "Exhibit A" and incorporated herein by this reference are copies of the Complaint, Praecipe, and Summons served upon Defendant and the Service Return, which constitute all of the process, pleadings, and orders served upon Defendant in this case to date.

2. In her Complaint, Plaintiff asserts a claim for discrimination against Defendant, alleging that Defendant wrongfully disciplined her and terminated her from employment within the company based on her age in violation of the Nebraska Age Discrimination in Employment Act and the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et. seq.

THIS COURT HAS SUBJECT MATTER JURISDICTION UNDER § 1331 and § 1367

3. This case is properly removable because the Complaint could have originally been filed in this Court pursuant to 28 U.S.C. §1331, as it involves a question of federal law as the Plaintiff alleges that the Defendant violated the Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et. seq. Pursuant to 28 U.S.C. §1367, the Court has jurisdiction of the claims the Plaintiff alleges under the Nebraska Age Discrimination in Employment Act because those claims are so related to the claims alleged under federal law such that they form part of the same case or controversy.

4. Defendant Hy-Vee, Inc. is an Iowa corporation registered as a foreign corporation in Nebraska.

5. Plaintiff is a resident of Lincoln, Nebraska. See Compl. (Ex. A.) at ¶ 4.

A. Removal to this District is Proper

6. Pursuant to the provisions of 28 U.S.C. § 1441(a), the United States District Court for the District of Nebraska is the federal district court embracing the place where the State Court Action is pending.

B. The Petition for Removal is Timely

7. This Notice is timely filed within 30 days of service of Plaintiff's Complaint on Defendant. 28 U.S.C. §1446(b). Defendant was served on July 6, 2015. Less than 30 days have elapsed since Defendant was served.

D. Notice of Petition of Removal

8. Defendant will promptly provide Plaintiff with written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice with the Clerk of the District Court of Lancaster County.

E. Reservation of Rights

9. Defendant reserves all rights, including defenses, and objections to this action, including defenses and objections as to the appropriate forum, jurisdiction, and service. The filing of this notice of removal is subject to and does not waive, any such defenses and objections. Defendant further reserves the right to amend or supplement this notice of removal.

JURY REQUEST AND PLACE OF TRIAL

10. The Defendant requests that this action be tried by jury, and that the trial be held in Lincoln, Nebraska.

WHEREFORE, Hy-Vee, Inc. having removed the case now pending in the District Court of Lancaster County, Nebraska, No. CI 15 2436, respectfully requests that this case proceed with adjudication before this Honorable Court as though Plaintiff had originally filed it in this Court.

Dated this 4th day of August, 2015.

HY-VEE, INC., Defendant.

BY: Baylor Evnen Curtiss Gruit & Witt, L.L.P.
Wells Fargo Center
1248 "O" Street, Ste. 600
Lincoln, NE 68508
402/475-1075
tgerdes@baylorevnen.com

By: /s/ Torrey J. Gerdes
Gail S. Perry, #17569
Torrey J. Gerdes, # 23924

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2015, I electronically filed the foregoing Notice of Removal with Jury Trial Requested in Lincoln, Nebraska with the Clerk of the Court using CM/ECF system. I also hereby certify that on August 4, 2015, a true and correct copy of the above foregoing document was sent via email and United States first-class mail, postage prepaid, to the following:

Kathleen M. Neary
Vincent M. Powers & Associates
PO Box 84936
Lincoln NE 68501-4936
kathleen@vpowerslaw.com
Attorney for the Plaintiff

By: /s/ Torrey J. Gerdes
Torrey J. Gerdes, # 23924

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

JACQUE ARMSTRONG,)	CASE NO. C1 15-2436
)	
Plaintiff,)	COMPLAINT,
)	DEMAND FOR JURY TRIAL
Vs.)	AND PRAECIPE
)	
HY-VEE, INC. and HY-VEE FOOD)	
STORES, INC.)	
Defendants.)	

COMES NOW the Plaintiff, by and through her attorney, and for her causes of action against the Defendants states as follows:

1. This is an action seeking redress for the violation of the rights guaranteed to the plaintiff by the Nebraska Age Discrimination in Employment Act and the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 621 et. seq. (ADEA).

2. This Court has original jurisdiction over the claim arising under Nebraska law and concurrent jurisdiction over the ADEA claim.

3. Plaintiff filed a complaint with the Lincoln Commission on Human Rights, the Nebraska Equal Opportunity Commission and the Equal Employment Opportunity Commission. The LCHR found reasonable cause to believe the Defendants discriminated against the Plaintiff on the basis of her age. The plaintiff has filed this timely action within 90 days of her receipt of her right to sue notice.

4. At all times alleged herein, the plaintiff was a resident of Lincoln, Lancaster County, Nebraska.

5. Upon information and belief, the Defendants are foreign corporations authorized to do business in the State of Nebraska and were doing business in Nebraska at all times alleged herein.

LANCASTER COUNTY
DISTRICT COURT
JUN 29 PM 4
CLERK OF THE COURT



001539258D02

ISSD

Exhibit A

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6. The Defendants are employers within the meaning of the state and federal age discrimination statutes referenced herein.

7. At all times alleged herein, Plaintiff was over forty (40) years of age and was 56 at the time of her termination from employment.

8. All discriminatory acts alleged herein occurred within Lancaster County, Nebraska.

9. At all times alleged herein, the Defendants owned and operated grocery stores in Lincoln, Lancaster County, Nebraska.

10. Prior to her termination, Plaintiff had been employed with the Defendants for approximately thirty two (32) years as a floral department manager. Plaintiff's work performance was satisfactory.

11. In October, 2013, Rod Burns became the Store Director and Plaintiff's supervisor. Burns continued as Ms. Armstrong's supervisor until her wrongful termination on May 23, 2014. From October, 2013, through her separation from employment, Burns constantly criticized and belittled the Plaintiff's work performance and subjected her to discriminatory disciplinary action for alleged unsatisfactory performance.

12. Following Plaintiff's wrongful termination, Defendants hired a substantially younger employee to replace the Plaintiff as Floral Department Manager.

13. A motivating factor in the Defendants' decision to wrongfully terminate the Plaintiff was her age.

14. All of the aforementioned discriminatory acts and/or conduct was done while the employees, supervisors, managers or agents were acting in the scope and course of their employment with the Defendants.

15. As a result of the Defendants' illegal conduct, the Plaintiff has suffered extreme emotional distress and has incurred substantial monetary damages, including, but not limited to lost wages and the value of job related benefits. Lost wages and the value of job related benefits will continued into the future.

16. At all times relevant, Defendants were aware of its duty and obligations under the aforementioned statutes. The Defendants' conduct was willful and/or reckless and liquidated damages are appropriate.

COUNT I

Plaintiff incorporates paragraphs 1 through 16 as if fully set forth herein.

17. The Plaintiff's age was a motivating factor in the Defendants' decision to terminate the Plaintiff from employment and/or discipline her for pretextual matters that led to her wrongful termination. Said discriminatory acts are violative of the Nebraska Age Discrimination in Employment Act and the ADEA.

18. As a direct and proximate result of Defendants' aforementioned illegal conduct, Plaintiff has suffered significant lost wages and value of benefits and will continue to incur lost wages and the wages of job related benefits into the future.

19. Insofar as Defendants' actions were willful and/or reckless, liquidated damages, prejudgment interest and all other damages allowed under law are appropriate.

WHEREFORE, Plaintiff respectfully requests that this Court assume jurisdiction herein as to count alleged herein and grant the following relief:

a. Declare the conduct of the Defendants to be violative of the rights of the Plaintiff under the appropriate state and/or federal law(s);

b. Direct the Defendants to place the plaintiff in the position which she previously held with back pay, all the job related benefits and job related increments to which she is entitled, including interest thereon, or to find that reinstatement is not appropriate and to award her front pay according to law;

c. Award the Plaintiff liquated damages and prejudgment interest in an amount to be determined by the jury or the court;

d. Award the Plaintiff all other damages allowed under state and federal law that are appropriate under the circumstances;

e. Enjoin the Defendants from any further discrimination against the Plaintiff;

f. Award the Plaintiff costs and reasonable attorney's fees and such other and further relief as the Court deems just and reasonable and appropriate to correct the wrong done to the Plaintiff.

FOR: JACQUE ARMSTRONG, Plaintiff

BY 

Kathleen M. Neary 20212
Vincent M. Powers & Associates
411 South 13th Street, Suite 300
Lincoln, NE 68508
(402) 474-8000
kathleen@vpowerslaw.com

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial in Lincoln, Nebraska.


Kathleen M. Neary NSBA 20212

PRAECIPE

TO THE CLERK OF THE DISTRICT COURT:

Please issue summons for service upon the following registered agent for Hy-Vee, Inc. via certified mail, return receipt requested.

Registered Agent for Hy-Vee, Inc.:

CT CORPORATION SYSTEM
5601 South 59th Street
Lincoln, NE 68516

Please return to the undersigned when summons has been issued.


Kathleen M. Neary NSBA 20212

Image ID:
D00458646D02

SUMMONS

Doc. No. 458646

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA
575 S. 10th Street - 3rd Floor
SEPARATE JUVENILE COURT-4th Floor
Lincoln NE 68508

Jacque Armstrong v. Hy-Vee, Inc

Case ID: CI 15 2436

TO: Hy-Vee, Inc

FILED BY

Clerk of the Lancaster District Court
06/30/2015

You have been sued by the following plaintiff(s):

Jacque Armstrong

Plaintiff's Attorney: Kathleen M Neary
Address: 411 S 13th St Ste 300
P.O. 84936
Lincoln, NE 68501-4936
Telephone: (402) 474-8000

A copy of the complaint/petition is attached. To defend this lawsuit, an appropriate response must be served on the parties and filed with the office of the clerk of the court within 30 days of service of the complaint/petition. If you fail to respond, the court may enter judgment for the relief demanded in the complaint/petition.

Date: JUNE 30, 2015

BY THE COURT:

Trey Z. Clark
Clerk



PLAINTIFF'S DIRECTIONS FOR SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT/PETITION ON:

Hy-Vee, Inc
c/o CT Corporation System
5601 South 59th Street
Lincoln, NE 68516

Method of service: Certified Mail

You are directed to make such service within ten days after the date of issue, and file with the court clerk proof of service within ten days after the signed receipt is received or is available electronically, whichever occurs first.

SERVICE RETURN

Doc. No. 458646

LANCASTER DISTRICT COURT
575 S. 10th Street - 3rd Floor
SEPARATE JUVENILE COURT-4th Floor
Lincoln NE 68508

To:

Case ID: CI 15 2436 Jacque Armstrong v. Hy-Vee, Inc

I certify that on

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HyVee, Inc.
c/o CT Corporation Sys
5601 South 59th
Lincoln NE 68516

2. Article Number

(Transfer from service label)

7010 0780 0000 3463 1053

PS Form 3811, July 2013

Domestic Return Receipt

(Shelf or authorized person)

CERTIFIED MAIL
PROOF OF SERVICE

Copies of the Summons were mailed by certified mail,

TO THE PARTY:

At the following address:

c/o CT Corporation System
5601 South 59th Street
Lincoln NE 68516

on the 1st day of July 2015, as required by Nebraska state law.

Postage \$

6.05

Attorney for:

Jacque Armstrong, Plaintiff
July 6 2015

The return receipt for mailing to the party was signed on

To: Hy-Vee, Inc
c/o CT Corporation System
5601 South 59th Street
Lincoln, NE 68516

From: Kathleen M Neary
411 S 13th St Ste 300
P.O. 84936
Lincoln, NE 68501-4936

ATTACH RETURN RECEIPT & RETUF

7010 0780 0000 3463 1053

001547537D02

LANCASTER COUNTY
CLERK OF THE
DISTRICT COURT
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